

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Action No. 17-20598

v.

HON. DENISE PAGE HOOD

RAYMOND W. ADAMS,

Defendant.

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**ORDER GRANTING MOTION FOR
LEAVE TO APPEAL IN FORMA PAUPERIS**
and
DENYING MOTION FOR APPOINTMENT OF APPELLATE COUNSEL¹

On May 6, 2021, the Court pronounced its sentence and the Judgment was entered on October 20, 2021. A Notice of Appeal was filed on May 13, 2021, along with the appropriate filing fee. This matter is now before the Court on Defendant Raymond W. Adams' Motion for Leave to Appeal In Forma Pauperis under Fed. R. App. P. 24. (ECF No. 126) No financial affidavit was submitted as required by Fed. R. App. P. 24, nor a Criminal Justice Act Form 23, although Defendant filed an Application to Proceed in District Court Without Prepaying Fees or Costs with some financial information and financial information from his prisoner account. (ECF Nos.

¹The Motion for Appointment of Appellate Counsel (ECF No. 125) and Motion for Leave to Appeal in Forma Pauperis (ECF No. 126) were previously held in abeyance. (ECF No. 128)

129 and 131)

Pursuant to 24(a)(1) of the Rules of Appellate Procedure, a party seeking to appeal *in forma pauperis* must file a motion in the district court and must file an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;
(B) claims an entitlement to redress; and
(C) states the issues that the party intends to present on appeal.

Fed. R. App. P. 24(a)(1); *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999).

After the required information has been filed under Rule 24(a)(1), the district court must ascertain both the individual's pauper status and the merits of the appeal. *Callihan*, 178 F.3d at 803.

The Application² submitted by Defendant does not include an affidavit similar to Form 4 noted above. However, when retained counsel filed a Notice of Appeal on Defendant's behalf, the filing fee was paid at that time, and the appeal process was allowed to move forward before the Sixth Circuit Court of Appeals. (ECF Nos. 117, 124) The motion and application may be moot at this time.

It is noted that since this is a criminal matter, Defendant is required to submit

² The Application submitted is the form used to proceed in the District Court, which is not the same Form 4 Motion/Financial Affidavit used on cases on appeal.

CJA Form 23 since he is an incarcerated defendant. Defendant did not file such before this Court.

In any event, based on the Application submitted by Defendant, he has shown pauper status because he is receiving no income, other than monetary gifts from his family. As required by Rule 24(a)(1) and the Sixth Circuit precedent, the Court must also ascertain the merits of the appeal. This Court finds Defendant's may have merit in that a jury trial was held in this matter and there may be findings of fact which may be in dispute.

For the reasons set forth above,

IT IS ORDERED that Defendant's Motion for Leave to Appeal in Forma Pauperis and Application to Proceed in District Court Without Prepaying Fees or Costs **[ECF Nos. 126 and 129]** are GRANTED.

IT IS FURTHER ORDERED that Defendant's Motion for Appointment of Appellate Counsel **[ECF No. 125]** is DENIED without prejudice since the Sixth Circuit Court of Appeals requires the filing of CJA Form 23. Defendant may renew this motion, if appropriate, before the Sixth Circuit Court of Appeals.

s/Denise Page Hood

Denise Page Hood
Chief Judge

Dated: November 4, 2021